

SENATE BILL 2141

By Finney L

AN ACT to amend Tennessee Code Annotated, Title 64,
relative to regional authorities.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 64, is amended by adding the following
as a new appropriately designated section:

(a) Regional megasite authorities may be hereby created pursuant to this part by two (2) or more participating counties. Any regional megasite authority established is a public body corporate and politic and is referred to as the "authority" in this part. An authority is created and established for the purpose of acquiring land, improving, financing, operating, maintaining, and marketing any megasite certified by the Tennessee Valley Authority. An authority shall consist of two (2) or more participating counties and is herein referred to as the "region" in this part.

(b) The authority shall be governed by a board of directors. The membership of the board shall be as follows:

(1) The county mayor of each county in the region;

(2) The mayor of each county seat in the region;

(3) The county industrial development board in each of the participating counties of the region shall elect one (1) of its members every two (2) years to serve on the board for a term of two (2) years, beginning at the first rganizational meeting of the board;

(4) One (1) member shall be appointed by and be a representative of the United States representative representing either all or the greatest number of the people of the region and shall serve at the pleasure of the United States representative;

(1) The members of the general assembly representing all or part of the region shall elect a senator member and a representative member to serve as a member of the board for a term of three (3) years or until that member is no longer serving in the general assembly. The senators serving the region shall meet and elect the senator member. The representatives serving the region shall meet and elect the representative member;

(2) One (1) member may be appointed by and serve at the pleasure of the board of directors of the Tennessee Valley authority;

(b) The board shall establish an executive committee having the managerial powers of the authority and shall appoint, elect, or hire an executive director. The board shall make the policy, which shall be implemented by the executive committee and executive director.

(c) All members of the board shall serve without compensation, except that they shall be reimbursed for actual travel expenses and other necessary expenses incurred in the performance of their official duties.

(d) The directors shall be indemnified by the authority for any liability they might incur while acting in their official capacity.

(e) All meetings of the board shall be public and shall comply with the state law on open meetings codified in title 8, chapter 44.

SECTION 4. As used in this Act, unless the context otherwise requires:

(1) "Authority" means a regional megasite authority created pursuant to this part;

(2) "Bonds" means bonds, notes, interim certificates, or other obligations of a authority issued pursuant to this part;

(3) "Contracting party" or "other contracting party" means any party to a sale contract or loan agreement except the authority;

(4) "Governing body" means the legislative body of a county or the board or other body in which the general legislative powers of a city or town are vested;

(5) "Lease" includes a lease containing an option to purchase the project for a nominal sum upon payment in full, or provision therefor, of all bonds issued in connection with the project and all interest thereon and all other expenses in connection with the project, and a lease containing an option to purchase the project at any time, as provided therein, upon payment of the purchase price which shall be sufficient to pay all bonds issued in connection with the project and all interest thereon and all other expenses incurred in connection with the project, but which payment may be made in the form of one (1) or more notes, debentures, bonds, or other secured or unsecured debt obligations of the lessee providing for timely payments, including, but not limited to, interest thereon sufficient for such purposes and delivered to the authority or to the trustee under the indenture pursuant to which the bonds were issued;

(6) "Loan agreement" means an agreement providing for the authority to loan the proceeds derived from the issuance of bonds pursuant to this part to one (1) or more contracting parties to be used to pay the cost of one (1) or more projects and providing for the repayment of such loan by the other contracting party or parties, and which may provide for such loans to be secured or evidenced by one (1) or more notes, debentures, bonds or other secured or unsecured debt obligations of the contracting party or parties, delivered to the authority or to the trustee under the indenture pursuant to which the bonds were issued;

(7) "Megasite" means a site certified by the Tennessee Valley Authority;

(8) "Participating county" or "participating counties" means counties which may, upon approval by a majority vote of the respective county legislative bodies, elect to

participate in such authorities as set out in this part; and in the event such an election is made, the provisions of this part apply to all counties making such an election;

(9) "Project" means all or any part of, or any interest in any land and building, including office building, any facility or other improvement on the land, and all real and personal properties deemed necessary in connection therewith, whether or not now in existence, that shall be suitable for any industrial or commercial enterprises or any combination of the foregoing located at the megasite;

(10) "Revenues" of a project, or derived from a project, include payments under a lease or sale contract and repayments under a loan agreement, or under notes, debentures, bonds and other secured or unsecured debt obligations of a lessee or contracting party delivered as herein provided; and

(11) "Sale contract" means a contract providing for the sale of one (1) or more projects to one (1) or more contracting parties and includes a contract providing for payment of the purchase price in one (1) or more installments. If the sale contract permits title to the project to pass to the other contracting party or parties prior to payment in full of the entire purchase price, it shall also provide for the other contracting party or parties to deliver to the authority or to the trustee under the indenture pursuant to which the bonds were issued one (1) or more notes, debentures, bonds or other secured or unsecured debt obligations of such contracting party or parties providing for timely payments, including, without limitation, interest thereon for the balance of the purchase price at or prior to the passage of such title.

SECTION 6. The directors have the following duties and powers, and, in exercising such duties and powers shall abide by all statutes, regulations and procedures to which counties must generally adhere in making such transactions, to:

(1) Acquire, whether by purchase, exchange, gift, lease, or otherwise, and improve, maintain, equip and furnish one (1) or more projects, including all real and personal properties the board of directors of the authority may deem necessary in connection with the projects and regardless of whether or not any such projects shall then be in existence;

(2) Lease to others one (1) or more projects and charge and collect rent for the projects and terminate any such lease upon the failure of the lessee to comply with any of the obligations of such lease; and include in any such lease, if desired, a provision that the lessee of the projects shall have options to purchase any or all of its projects or that upon payment of all of the indebtedness of the authority it may lease or convey any or all of its projects to the lessee of the projects with or without consideration, and to enter into amendments to such leases, which amendments, among other things, may provide for extending the terms of such leases, amending or extending any payments in lieu of taxes due under the leases, subject to any applicable limitations provided in Section ___ hereof, and amending or extending any rents or other payments due under the leases;

(3) Sell to others one (1) or more projects for such payments and upon such terms and conditions as the board of directors of the authority may deem advisable, in accordance with the provisions of sale contracts entered into pursuant to this chapter;

(4) Enter into loan agreements with others with respect to one (1) or more projects for such payments and upon such terms and conditions as the board of directors of the authority may deem advisable, in accordance with the provisions of this chapter;

(5) Sell, exchange, donate and convey any or all of its properties, including, without limitation, all or any part of the rents, revenues and receipts of the authority from

its projects, whenever its board of directors shall find any such action to be in furtherance of the purposes for which the authority was organized;

(6) Issue its bonds, and otherwise borrow money from banks or other financial institutions by issuing its notes for the purpose of carrying out any of its powers;

(7) Borrow money from a county or a municipality through a loan agreement executed with a county or a municipality for the purpose of carrying out any of its powers;

(8) As security for the payment of the principal of and interest on any bonds or notes so issued and any agreements made in connection with the bonds or notes, mortgage and pledge any or all of its projects or any part or parts of the projects, whether then owned or thereafter acquired, and pledge the revenues and receipts from any projects, or assign and pledge all or any part of its interest in and rights under the leases, sale contracts or loan agreements relating to the projects, including, without limitation, the pledging and/or assignment and pledging of all or any part of the rents, revenues and receipts of any project as security for payment of any bonds or notes of the authority issued with respect to the project, or any other project or projects of the authority and any agreements made in connection with the projects, or procure or pledge municipal bond insurance, letters of credit, lines of credit or other liquidity facilities as additional security and liquidity for the bonds or notes;

(9) Enter into such contracts and cooperative agreements with federal, state and local governments, and agencies thereof, with private individuals, corporations, associations and with other organizations as the board may deem necessary or convenient in carrying out the purposes of this part;

(10) Adopt, amend and repeal bylaws;

(11) Promulgate and enforce such rules and regulations as the board of directors may deem proper for the orderly administration of the authority and the efficient operation of its facilities. In exercising the powers granted in this subdivision, the directors shall abide by all statutes, regulations and procedures to which counties must conform in such matters;

(12) Appoint such managers, officers, employees, attorneys and agents as the board deems necessary for the transaction of its business, fix their compensation, define their duties, and require bonds of such of them as the board may determine;

(13) Except as otherwise expressly provided in this part, the directors shall have full and exclusive control of and responsibility for the administration of properties and facilities constructed or acquired pursuant to this part. This subsection shall not be construed to authorize the directors to exercise such authority in a manner inconsistent with the statutes, regulations and procedures governing such matters in county government; and

(8) Have and exercise such other authority as deemed necessary by the board to further and promote the orderly economic development of the region.

SECTION 7. (a) The authority is authorized and empowered to issue bonds from time to time for the purpose of paying in whole or in part the cost of acquiring lands and interests therein and of constructing facilities and improvements subject to the limitations and conditions provided in this part. Any resolution of the board authorizing the sale of bonds shall be submitted to the state funding board established by § 9-9-101, and such resolution shall only become effective upon receiving the approval of the state funding board. The state funding board, upon rejecting any resolution of the board authorizing any bond issue, shall state in writing the reasons for this action.

(b)

(1) Except as otherwise expressly provided in this section, all bonds issued by the authority are payable solely out of the revenues and receipts derived from the agency's projects or of any thereof as may be designated in the proceedings of the board under which the bonds are authorized to be issued, including debt obligations of the lessee or contracting party obtained from or in connection with the financing of a project; provided, that notes issued in anticipation of the issuance of bonds may be retired out of the proceeds of such bonds. Such bonds may be executed and delivered by the authority at any time and from time to time, may be in such form and denominations and of such terms and maturities, may be in registered or bearer form either as to principal or interest, or both, may be payable in such installments and at such time or times not exceeding forty (40) years from the date thereof, may be payable at such place or places whether within or without the state of Tennessee, may bear interest at such rate or rates payable at such time or times and at such place or places and evidenced in such manner, may be executed by such officers of the authority, and may contain such provisions not inconsistent herewith, all as shall be provided in the proceedings of the board whereunder the bonds shall be authorized to be issued.

(2) If deemed advisable by the board, there may be retained in the proceedings under which any bonds of the authority are authorized to be issued, an option to redeem all or any part thereof as may be specified in such proceedings, at such price or prices and after such notice or notices and on such terms and conditions as may be set forth in such proceedings and as may be briefly recited on the face of the bonds, but nothing contained in this section shall

be construed to confer on the authority any right or option to redeem any bonds except as may be provided in the proceedings under which they are issued.

(3) Any bonds of the authority may be sold at public or private sale in such manner, at such price and from time to time as may be determined by the board to be most advantageous, and the authority may pay all expenses, premiums and commissions that its board may deem necessary or advantageous in connection with the issuance thereof.

(4) Issuance by the board of one (1) or more series of bonds for one (1) or more purposes shall not preclude it from issuing other bonds in connection with the same project or any other project, but the proceedings whereunder any subsequent bonds may be issued shall recognize and protect any prior pledge or mortgage made for any prior issue of bonds.

(5) Proceeds of bonds issued by the authority may be used for the purpose of constructing, acquiring, reconstructing, improving, equipping, furnishing, bettering or extending any project or projects, including the payment of interest on the bonds during construction of any such project and for two (2) years after the estimated date of completion, and payment of engineering, fiscal, architectural and legal expenses incurred in connection with such project and the issuance of the bonds, and the establishment of a reasonable reserve fund for the payment of principal of and interest on such bonds in the event of a deficiency in the revenues and receipts available for such payment.

(c) Any bonds or notes of the authority at any time outstanding may at any time and from time to time be refunded by the authority by the issuance of its refunding bonds in such amount as the board of directors may deem necessary, but not exceeding the sum of the following:

- (1) The principal amount of the obligations being refinanced;
- (2) Applicable redemption premiums thereon;
- (3) Unpaid interest on such obligations to the date of delivery or exchange of the refunding bonds;
- (4) In the event the proceeds from the sale of the refunding bonds are to be deposited in trust as provided in this section, interest to accrue on such obligations from the date of delivery to the first or any subsequent available redemption date or dates selected, in its discretion, by the board or to the date or dates of maturity, whichever is determined by the board to be most advantageous or necessary to the authority;

SECTION 8.

(a) The authority is hereby declared to be performing a public function in behalf of the participating counties and to be a public instrumentality of such counties. Accordingly, the authority and all properties at any time owned by it and the income and revenues therefrom and all bonds issued by it and the income therefrom shall be exempt from all taxation in the state of Tennessee. Also, for purposes of the Securities Act of 1980, compiled in chapter 2, part 1 of this title, and any amendment thereto or substitution therefor, bonds issued by the authority shall be deemed to be securities issued by a public instrumentality or a political subdivision of the state of Tennessee.

(b)

(1) A participating county, and any municipality in which a portion of a megasite is located, may delegate to the authority the authority to negotiate and enter into with a authority's lessees, payments in lieu of ad valorem taxes; provided, that such authorization shall be granted only upon a finding that such payments are deemed to be in furtherance of the authority's public purposes as

defined in this subsection. The legislative body of a participating, or any municipality making such delegation may, in its sole discretion, require the authority to submit any such agreement to the applicable legislative body for its approval.

(2) If the project is located within the corporate limits of a municipality, the payments shall be apportioned between the municipality and the county in which the megasite is located in the same manner as ad valorem taxes are apportioned on the date of execution of the agreement for payments in lieu of taxes.

(3) The trustee shall bill and collect all in lieu of tax payments based on the agreement and the apportioned taxes.

(c) An agreement for payment in lieu of taxes shall contain such terms and conditions as the authority may determine, which may include, but shall not be limited to, provisions to:

(1) Defer and/or subordinate payment of all or a portion of the payment in lieu of taxes to such future time as the authority may determine;

(2) Require interest to accrue on such deferred amount;

(3) Require that payments in lieu of taxes, including any interest, expenses or costs of collection of same, shall be secured by a deed of trust upon the project; or

(4) Provide that such deed of trust may be subordinate to other liens or indebtedness of the project.

(d)

(1) Before October 1 of each year, the authority lessee shall submit to the state board of equalization an annual report containing:

(A) A list of all the real and personal property owned by the authority and its associated entities and subsidiaries;

(B) The value of each listed property as estimated by the lessee;

(C) The date and term of the lease for each listed property;

(D) The amount of payments made in lieu of property taxes for each listed property;

(E) The date each listed property is scheduled to return to the regular tax rolls; and

(F) A calculation of the taxes which would have been due for each listed property if the properties were privately owned or otherwise subject to taxation.

(2) Each lessee of the authority shall be responsible for the timely completion and filing of the report, and failure to timely complete and file the report shall subject such lessees to a penalty; provided, that no lessee shall be liable who has provided the state board of equalization information required by this section insofar as may be pertinent to property leased by the lessee from the authority. The penalty for late filing shall be fifty dollars (\$50.00) for each day the report is late up to a maximum of five hundred dollars (\$500), and the maximum penalty shall accrue interest at the rate of one and one-half percent (1.5%) per month, plus any cost of collection.

SECTION 9. (a) The authority is authorized to prepare and submit to the participating counties for approval an economic impact plan in the manner described in this section.

(b) An economic impact plan shall be a written document and shall specifically identify the area to be included in the plan. The area to be included in the plan must be located in the participating counties and must also include the county in which the

megasite is located. In addition to the megasite, the area that is the subject of the economic impact plan may also include such other properties that the authority determines will be directly improved or benefited due to the undertaking of the megasite.

The economic impact plan shall:

(1) Identify the boundaries of the area subject to the plan;

(2) Discuss the expected benefits to the participating counties from the development of the area subject to the plan, including anticipated tax receipts and jobs created; and

(3) Provide that the property taxes imposed on the property, including the personal property, located within the area subject to the plan will be distributable in the manner described in subsection (c) for a period of time specified in the plan.

(c) Upon the approval by the participating counties of an economic impact plan with respect to an area, all property taxes levied upon property located within such area by any taxing agency after the effective date of the plan shall be divided as follows:

(1) That portion of the taxes that is equal to the amount of taxes, if any, that were payable with respect to the property for the year prior to the date the economic impact plan was approved, the "base tax amount", to the participating counties shall be allocated to and, when collected, shall be paid to the respective taxing agencies as taxes levied by such taxing agencies on all other property are paid; provided, that in any year in which the taxes on any property are less than the base tax amount, there shall be allocated and paid to the respective taxing agencies only those taxes actually imposed; and

(2) Any excess of taxes over the base tax amount shall be allocated to and, when collected, shall be paid into a separate fund of the authority

established to hold such payments until applied for the purposes described in subsection (h).

(d) Notwithstanding any provision in subsection (a) to the contrary, the authority may prepare, and the participating counties may approve, an economic impact plan that allocates an amount greater than the base tax amount to the taxing agencies.

(e) An economic impact plan shall not provide for an allocation of taxes to the authority for a period in excess of thirty (30) years.

(f) The governing bodies of the participating counties may approve an economic impact plan by resolution, notwithstanding any local charter provision or other provision to the contrary. If the area subject to an economic impact plan is located within the corporate limits of a city or town, the taxes that would otherwise be payable to the city, town or county shall not be paid to the authority unless such city, town or county has also approved the economic impact plan.

(g) Before the authority submits an economic impact plan for approval to the governing bodies of the participating counties or to any other city, the authority shall hold a public hearing relating to the proposed plan after publishing a notice of such public hearing in a newspaper of general circulation in the participating counties at least two (2) weeks prior to the date of such public hearing. Such notice shall include the time, place and purpose of the public hearing, and notice of how a map of the area subject to the plan can be viewed by the public.

(h) All taxes allocated to the authority pursuant to this section shall only be applied by the authority to pay expenses of the board in furtherance of promoting economic development in the participating counties, to pay the cost of projects, or to pay debt service on bonds or other obligations issued by the authority to pay the cost of the

projects. The authority is authorized to pledge any or all amounts received by the authority pursuant to this section to the payment of such bonds or other obligations.

(i) After the approval by a municipality of an economic impact plan, the clerk or other recording official of such municipality shall transmit to the appropriate tax assessors and to each taxing agency to be affected, a copy of the description of all property within the area subject to the economic impact plan and a copy of the resolution approving that plan. If the plan is approved by any taxing agency other than the municipality, the clerk or other recording official of that taxing agency shall also provide a copy of the resolution approving the plan to such tax assessors and taxing agencies.

(j) Notwithstanding anything to the contrary in this section, taxes levied upon property within an economic impact area by any taxing agency for the payment of principal of and interest on all bonds, loans, or other indebtedness of such taxing agency, and taxes levied by or for the benefit of the state of Tennessee, shall not be subject to allocation as provided in subsection (c), but may still be levied against such property and, when collected, paid to such taxing agency as taxes levied by such taxing agency on all other property are paid and collected.

SECTION 10. The authority shall be subject to the governmental entity review law, compiled in title 4, chapter 29, and reviewed pursuant to § 4-29-119.

SECTION 11. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 12. This act shall be effective upon becoming law, the public welfare requiring it.